



**Promoting integrity, diligence and skill
in Hawaii Notarial Practice.
66 C.J.S. Notaries 17**

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TESTIMONY RE: **SB 333, RELATING TO NOTARY PUBLIC FEES**
COMMITTEE: **SENATE COMMITTEE ON WAYS AND MEANS**
TESTIFIER: **WRITTEN AND ORAL COMMENTS**
Cheryl Kaster, President, at 348-1892

Chair Tokuda and Members of the Committee:

Thank you for hearing our testimony concerning SB 333 to increase Notary Fees. Information in the first portion of this written testimony a very small representation of what Notaries must know to perform Notarial Services with integrity, diligence and skill on behalf of the Consumer Public, and Hawaii's Notary-Employers.

The ethical imperatives contained in the National Notary Association's Notary Public Code of Professional Conduct (required to be followed by HAR 5-11-3 Conduct) are also not discussed here.

The Association of Hawaii Notaries respectfully urges you to pass this SB 333, to include an amendment to HRS 456:17 which permits and regulates the fees Mobile Notaries may charge which appears at the end of this testimony.

SUPPORT FOR INCREASE IN NOTARY FEES:

1. **LAST INCREASE:** Fees Notaries may charge were last increased in 1995, from \$4 to \$5.
2. **DUTIES AND LIABILITIES:**

Definition

A notary is defined as a "public officer whose function is to attest and certify, by the notary's hand and official seal, certain classes of documents, in order to give them credit and authenticity in foreign jurisdictions, to take acknowledgments of deeds and other conveyances, and certify them, and to perform certain official acts, chiefly in commercial matters." 66 C.J.S. Notaries 2. (Notary Public Manual, 2016, Pg. 7)

- a. **\$456-6 Liabilities; limitations on; official bond.** For the official misconduct or neglect of a notary public or breach of any of the conditions of the notary's official bond, the notary and the surety on the notary's official bond shall be liable to the party injured thereby for all the damages sustained
- b. **Further:**
 - i. **Notaries** may be financially liable to all parties for damages suffered due to their misconduct, neglect or breach of their duties.
 - ii. **Notary-Employers** may also be held jointly liable to those same parties if they do not undertake to insure their notary-employees are educated and knowledgeable about the duties they perform.

3. DUTIES – NOTARIES MUST PERFORM FOR EVERY NOTARIZATION:

- a. Positively identify a signer.
- b. Carefully compare information on Identification to the signer.
- c. Determine awareness of the purpose and willingness to signer to sign the document. The signer must be both aware and willing or the Notary must refuse to Notarize.
- d. Other situations/circumstances that necessitate special procedures or refusal to notarize.
 - i. The signer is unable to sign their signature sign. An option is a “Signature by Mark” notarization which requires two witnesses and special procedure and wording.
 - ii. Signature by the Notary when directed to by a disabled person, with witnesses and different special procedure form “a.” above.
 - iii. If the signer is unable to communicate in a language the Notary is fluent in, Notaries are not permitted to notarize through an interpreter (exception would be a court reported through a certified court interpreter) and must be referred to a Notary fluent in the signer’s language.
 - iv. The signer may be under the influence of even a legally prescribed drug that impairs their ability to make decisions and the Notary must refuse to Notarize.
 - v. The signer may be under undue influence someone else that accompanies them at the time of notarization. If so, the Notary should refuse to notarize.
 - vi. **If the signer seems to be either not aware or un willing to sign then the Notary must refuse to notarize.**
- e. Review the document to determine certain criteria.
 - i. The name of the signer as it appears on the document:
 1. The signer’s name, must appear consistently.
 2. If the name is inconsistent only in the notarial wording, the Notary Public must correct it because failing to do so will cause a recordable document to be rejected.
 3. Verify that the signer has identification that is acceptable under Hawaii law.
 4. Positively identify the signer by insuring identification supports the name of the signer as it appears on the document.
 - ii. The date of the document if it is dated.
 - iii. If the document specifically refers to any other documents or, for example, exhibits, those attachments must be present. Missing attachments mean the document is incomplete and the Notary must refuse to notarize until the document is complete.
 - iv. If the document has page numbers, the Notary must quickly scan the document to insure all pages are present.
 - v. Administer an Oath when required by wording in the notarial certificate prescribed. Giving an oath when required by the wording in the notarial certificate is NOT commonly done by Hawaii Notaries, even though failing to do so means the Notary completes a FALSE notarial certificate.
 - vi. Certain Acknowledgments also require an oath.
- f. **POA acknowledgment:** A special acknowledgement is permitted by law for a AIF to sign on behalf of the Principal and only is required to acknowledge they executed the document on behalf of the principal, and did so as the free act and deed of the Principal.
- g. **NOTARIAL RECORD BOOK (also commonly referred to as the Notary Journal). §456-15 Record; copies as evidence.** Every notary public shall record at length in a book of records all acts, protests, depositions, and other things, by the notary noted or done in the notary’s official capacity. Details of each notarial act, INCLUDING EACH DUPLICATE ORIGINAL OF ANY DOCUMENT NOTARIZED, must be entered on a separate line of the Notary’s journal. **This requirement significantly increases the time it takes to notarize when a Notary is presented with multiple duplicate originals of one or more documents.** Recording entries in the journal, at length, is time-consuming, but it is a vital part of the notarial process both for the protection of the Notary themselves, and also for the public they provide services to.

PROPOSED AMENDMENT TO ESTABLISHED ACCEPTABLE FEES FOR MOBILE NOTARY SERVICES

There are approximately 350 independent Notaries in Hawaii (based on an extrapolation from the 2,955 names and email addresses we obtained from the Notary Office (approximately one half of the almost 6,000 Hawaii Notaries).

Mobile Notaries go into hospitals, prisons, nursing homes, sometimes in “emergency” situations to notarize for patients facing surgery. They provide Notary Services for travelers, crew members on the ships that bring passengers to Honolulu. Independent notaries, which likely include the majority of Mobile Notaries, are increasingly being called upon because the usual place one would go for a Notary, their banks, are failing to provide Notarial services for the public good and convenience, even though they have many Notaries on staff, or they provide very limited hours even though they are required to provide Notary Service during the employer’s business hours.

When several people must sign documents, it is often easier to request Mobile Services rather than everyone having to go to the Notary. I once notarized for about 12 family members executing documents related to burial plots.

The genesis of the request for this amendment to include a maximum fee for Mobile Notary Services is the result of numerous reports to the two board members of the Association of Hawaii Notaries who are residents of Hawaii (Cheryl Kaster and Mary Olson). Specifically, these reports all are concerning excessive fees charged by a Mobile Notary on Oahu (hereinafter “Oahu Mobile Notary”) and detailed below.

Despite the reports of excessive fees being charged by one Notary, we are asking that this amendment be approved, acknowledging the valuable services provided by Mobile Notaries while, at the same time, authorizing the charging of a **REASONABLE Mobile Notary Fee**.

The three board members of the Association of Hawaii Notaries are all independent, Mobile Notaries, with a combined experience as Notaries of 33 years. We ask that the Hawaii Legislature acknowledge the vital services provided by Mobile Notaries by legislating a reasonable fee that may be charged by Hawaii’s Mobile Notaries.

EXCESSIVE CHARGES

\$200 for notarizing one document. In January of 2017, I notarized for an inmate at Waiawa Correctional Center. This inmate related to me that, in December of 2015, he had received Notary Service while an inmate at OCCC, and the Oahu Mobile Notary charged him \$200. This charge has been verified as appearing on the inmate’s financial account and was paid, by name, to the Oahu Mobile Notary.

This inmate also did not have identification that would permit the Notary to notarize in the first place, and did not give him an oath, which is required by the wording on the document being notarized (the same document I notarized for him in January). She broke Hawaii law to notarize for him and charged him \$200 for the privilege.

\$300 to notarize a will in Makaha. In 2016, Mary Olson called the Oahu Mobile Notary to inquire what it would cost for mobile service to Makaha to notarize a one-page “will” written by her mother. The Oahu Mobile Notary **quoted \$300**. Mary then asked her how much she would charge if the customer came to her (her website indicates her business address is in downtown Honolulu). Mary was told the Notary would give a 50% discount, to **\$150 (for a ONE PAGE notarization at the Notary’s location)**.

\$300 to notarize a single document at OCCC (February 2017). Earlier this month, I was contacted by the wife of an inmate who had initially contacted the Oahu Mobile Notary to notarize a document for her husband at OCCC. At no time did the Oahu Mobile Notary inquire about whether she would be able to identify the inmate. Since prison I.D. is not acceptable, she would have had to ask the wife if she had acceptable I.D.

The Oahu Mobile Notary made an appointment to meet the wife the day before she was scheduled to do the notarization **so the wife could pay her the \$300 IN ADVANCE**. The inmate's wife called to cancel the \$300 notarization after arranging with me to do the notarization. The wife was able to provide her husband's valid identification.

\$150 to notarize in Mililani. Mary Olson was recently contacted to notarize for a customer at Mililani High School, a distance, one-way from Makaha, of 28.5 miles. The customer told Mary he had initially contacted the Oahu Mobile Notary who, coming from a distance of approximately 19 miles, one-way, was going to charge him \$150.

The customer declined that offer and contacted Mary, instead. Mary charged the customer \$60 travel, plus \$5 per document, for two notarized documents. The entire process at the high school took approximately 35 minutes because the documents that needed notarization were not ready when she arrived. The total paid to Mary by the Mililani customer was \$70. Mary saved the customer \$80 while traveling approximately 20 miles further, round trip.

In consideration of the foregoing, the Association of Hawaii Notaries respectfully requests that this Committee approve the requested amendment which appears in its entirety on the next page.

§456-17 Notary Fees

Subject to section 456-18, every notary public is entitled to demand and receive the following fees.

(a) Notarial Acts (NO CHANGES TO (a) from previous amendment)

- a. Noting the protest of mercantile paper \$10.
- b. Each notice and certified copy of protest, \$10.
- c. Noting any other protest, \$10.
- d. Every notice thereof, and certified copy of protest, \$10.
- e. Every deposition, or official certificate, \$10.
- f. Administration of oath, including the certificate of oath, \$10 for each party; for affixing the certificate of the oath to every duplicate original document beyond two, \$5.00 for each party.
- g. Taking an acknowledgment, including the certificate of acknowledgment, \$10 for each party signing; for affixing the certificate to every duplicate original document beyond one, \$5.

ADDED SECTIONS

(b) Mobile Notary Service Fees permitted to be charged Customers requesting specified Notarial Acts, subject to 456-17(a).

- a. DEFINITION of “Mobile Notary Services”: Mobile Notary Services are defined as the performance of Notarial Acts in which the Notary Public:
 - i. Agrees to meet with Notary Customer(s) to perform requested Notarial Acts.
 - ii. Travel from one point certain (Point A) to another point certain (Point B) is required for
 1. the convenience, or
 2. the physical necessity of the Customer(s) requesting a Notarial Act(s).
 - iii. Mobile Notary Services occur when the Notary Public is asked to meet with the Customer(s) at a time-certain (the “Appointment Time”) to perform the agreed-upon Notarial Acts.

(c) Mobile Notary Travel fee:

- a. The Notary Public providing Mobile Notary Services may charge for the Mobile Services, as follows:
 - i. A flat rate of up to \$35; or
 - ii. Two dollars and fifty-cents per mile, roundtrip, whichever of greater;

(d) Fee for Wait Time. The Mobile Notary may charge up to \$1 per minute as “Wait Time” if the Notary arrives at the appointment on time and is required to wait more than ten (10) minutes, beyond the scheduled Appointment Time, to perform the Mobile Notary Services;

- (e) Prior Disclosure of Mobile Notary Services Fees Required. The Mobile Notary must disclose to the Customer, at the time the Mobile Notary Services are requested:
- a. Anticipated Fee for Notarial Acts based on the Customer's request, to include:
 - i. Number of documents.
 - ii. Type of Notarial Acts.
 - iii. Number of signers per document.
 - iv. Number of duplicate originals, if any, of any document requiring notarization.
 - b. Fee for Mobile Notary Travel to the requested destination.
 - c. Fee for Wait Time.
- (f) Agreed-upon Mobile Notary Service Travel fee and Wait Time. Provided the Mobile Notary has disclosed to the Customer the fees for Travel and Wait time at the time the appointment is made, Travel and Wait Time fees may still be demanded from the Customer **even if the Notary is unable to complete the Notarial Acts for any reason beyond the control of the Notary Public.**
- a. Example: failing to confirm positive identification or other circumstances (can the person sign, are they able to communicate with the Notary, etc.) and then arriving and not being able to notarize should NOT be considered beyond the control of the Notary.
 - b. However, if there is no way for the Notary to ask the necessary questions or if false information is provided, leading the Notary to believe they can notarize for the customer, then this would be beyond the control of the Notary and the Notary may assess the agreed-upon fees for travel and/or wait time.